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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ALCAZAR FLORES,

Defendant and Appellant.

F071821

(Super. Ct. No. VCF277902)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.[†]

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Gomes, Acting P.J., Detjen, J. and Peña, J.

[†]Retired judge of the Tulare Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Jose Alcazar Flores was convicted of first degree murder in the shooting death of Edwin Jaimes. The jury also found true the allegation that Flores personally used a firearm, which resulted in the death of Jaimes. Flores was sentenced to the prescribed term of 25 years to life, plus an additional and consecutive 25 years to life for the firearm enhancement.

Appellate counsel failed to identify any arguable issues in the case. After a thorough review of the record we could not identify any issues, and therefore affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The Information

The first amended information charged Flores with the first degree murder of Jaimes. (Pen. Code, § 187, subd. (a).)¹ This count alleged Flores personally used a handgun within the meaning of section 12022.53, subdivisions (b), (c), and (d), section 1203.6, subdivision (a)(1), and section 12022.5, subdivision (a)(1).

The Testimony

Jose Lara Rodriguez discovered Jaimes's dead body in an orchard at the ranch at which he works. He called the emergency operator to report the discovery. The cause of death was three gunshot wounds to the head. One wound had gunpowder tattooing, which indicated the gun was very close when it was fired. A second wound had gunpowder stippling, which indicated the gun was approximately 12 inches away when it was fired. Alcohol, cocaine, and marijuana were found in Jaimes's body.

Elizabeth Sanchez testified she was a friend to both Michael Navarette and Jaimes. The last time she saw Jaimes was the day before his body was discovered. She had gone to Navarette's house with a friend, Monica Alafa, because she had heard there was a party. Navarette, Jaimes, and Flores were the only ones present at the house. Jaimes and Flores were sleeping. Sanchez visited with Navarette for a while, and then fell asleep. In

¹All statutory references are to the Penal Code unless otherwise stated.

the morning, Flores gave Sanchez and her friend a ride home. That was the last time she saw Jaimes. Alafa testified in a manner essentially consistent with Sanchez's testimony.

Fleciano Delgadillo testified Jaimes had been staying at his house for the two weeks before he was murdered. He recalled he saw Jaimes apparently shortly after Sanchez and Alafa were dropped off at their house. Jaimes came in and took a shower. Jaimes said he had a fight with Navarette, but that everything was fine and he was going back to Navarette's house that day. Delgadillo returned to bed. When he woke up, Jaimes was gone.

Flores was interviewed three times by the investigating officers. These statements will be summarized below. It is sufficient to note that Flores initially denied being present at the shooting, but eventually admitted he was present when Navarette shot Jaimes. His final version of events was that the gun was in his hand when it discharged, but claimed it discharged accidentally.

Gunshot residue test kits were obtained from Jaimes, Navarette, Flores, and Flores's vehicle. The results from the samples collected from Jaimes showed gunshot residue on the left hand, and particles that were consistent with gunshot residue on both hands. The results of the tests for Navarette showed no particles of gunshot residue present. The results from the samples collected from Flores showed particles consistent with gunshot residue on both hands. The results from the sample collected from Flores's vehicle showed no gunshot residue collected from the front passenger seat, many particles consistent with gunshot residue collected from the steering wheel, and gunshot residue collected from the driver's seat.

On cross-examination of the prosecution's expert witness, defense counsel confirmed that gunshot residue is easily removed from any surface. Gunshot residue will typically be removed by the activities of daily living in four to five hours. The witness also explained that in some construction applications particles consistent with gunshot residue could be found, but such sources also include many contaminants not found when

firing a gun. The witness was able to rule out construction sources for the particles she found because there were no contaminants in the samples consistent with a construction source.

Various shoe impressions were found in the dirt at the scene of the murder. Shoes taken from Jaimes, Flores, and Navarette were compared to the shoe impressions. One pair of shoes belonging to Navarette had a similar sole design as some of the impressions at the scene. The shoes from Jaimes had a similar sole design as some of the impressions found at the scene. One heel impression was similar to the shoes obtained from Flores. Flores admitted to police officers the shoes in their possession were the same shoes he wore at the scene of the shooting.

The prosecution also presented evidence the shoe impressions that were similar to Flores's shoes could also have been left by one of the deputies responding to the murder.

The defense consisted of two witnesses. First, Thomas William Whitney testified that on a day around the day of the shooting, he observed a car pull up across the street from his house. He saw two Hispanic men exit the vehicle, while a third waited in the vehicle. The two men who exited the vehicle had a minor fistfight. The man in the vehicle exited the vehicle and broke up the fight. One man walked away, and the other two returned to the vehicle, which drove away. This incident occurred around 10:00 a.m.

The purpose of this evidence was an attempt to bolster Flores's testimony. The weight of the evidence was diminished because Whitney testified these events occurred on the day when numerous police were on the street. That day was two days after the shooting when police were executing search warrants in two nearby houses. The weight of the evidence was also diminished when Whitney described the color of the vehicle as maroon, while Flores's vehicle was black.

The second witness to testify was Flores. His testimony consisted of denying any involvement in the shooting. He testified that on the morning of the shooting, he took Navarette and Jaimes to a local dairy where the men drank fresh milk mixed with alcohol,

a drink called *leche caliente*. At the dairy Navarette and Jaimes got into an argument and the owner of the dairy asked them to leave. Flores drove the two home. Jaimes asked to be dropped off on a corner. Navarette and Jaimes then exited the vehicle and began fighting. Flores exited the vehicle and broke up the fight. Jaimes then walked to the house at which he was staying, and Navarette and Flores drove to Navarette's house. Flores dropped off Navarette and left, not seeing either again. He denied any knowledge of the shooting.

Flores also attempted to explain two items of damaging evidence. He explained the presence of the gunshot residue on his person and vehicle was the result of his work in the construction industry. The person for whom he worked had construction tools that used a .22-caliber shell to drive nails into concrete. Flores was around the tool and moved it frequently. His explanation was that apparently the gunshot residue transferred onto himself and his clothes from this exposure. Flores then transferred the gunshot residue to his vehicle.

Flores explained his statements to the police by stating the initial story he told the police was the truth, which was similar to his trial testimony. However, the investigating detectives kept telling him he was lying and feeding him information, which he believed to be true. Eventually, Flores wore down and began telling the investigating detectives whatever they wanted to hear so he could go home. It is unclear why Flores believed telling the detectives he shot Jaimes would result in his being released.

In rebuttal, the prosecutor called Dennis Mills, the person for whom Flores worked before the murder. Mills denied having a nail gun similar to the one described by Flores and stated he employed Flores as a gardener. Flores testified in rebuttal that Mills did have such a tool and he used it when working on Mill's daughter's house. It did not appear Mills had a good recollection of the events from this time period.

Flores's Statements to the Police

The prosecution's case relied extensively on Flores's statements and admissions made during his interrogation by the detectives investigating the case. The first statement was taken on January 15, 2013. It consisted of two parts separated by several hours. The second statement was taken in the early morning hours of January 17, 2013. A third statement was taken from Flores about an hour later. This statement occurred when Flores called the detectives after giving his statement on the 17th and said he wanted to make a further statement. The prosecution presented the January 17, 2013, statement in its case-in-chief. In his defense case, Flores presented both parts of the January 15, 2013, statement and the second statement on January 17, 2013. We will summarize the statements in the order they were given by Flores, not the order they were presented to the jury.

January 15, 2013, Part 1

Flores stated he met Jaimes through Navarette and Navarette's brother David. Flores stated Jaimes was always getting into trouble and fighting with people, although Flores never had any issues with Jaimes.

On the night before the shooting Flores showed up at Navarette's house late in the evening. Several people were at the house. Flores eventually fell asleep. When he woke up in the morning, Jaimes and some girls were sleeping on the sofa. Flores told Navarette he was going to get *leche caliente* with a friend. Navarette and Jaimes asked to accompany him. On the way to the ranch, they picked up Flores's friend, Chewy. The men stayed at the ranch for a while, and then someone from the ranch asked Flores to take Navarette and Jaimes home. Flores dropped Jaimes at the corner identified by Jaimes, and then took Navarette home. Flores then returned to the ranch to be with Chewy. The two left the ranch to watch Chewy's son play in a soccer game.

Upon further questioning, Flores admitted that Navarette and Jaimes had an argument while at the ranch. They continued bickering during the drive home.

When told that Navarette had said he and Jaimes decided to stop and fight to end the argument, Flores said that when he dropped off Jaimes at the corner, Jaimes and Navarette began wrestling around. Flores denied they stopped at any other location to fight.

At this point the interrogating detectives told Flores they had collected a lot of evidence and statements, and the story Flores was telling them was inconsistent with the evidence. Flores continued to insist his story was the truth. Flores also denied that Jaimes was shot during the fight. When one of the investigating detectives told Flores that Navarette said Flores had shot Jaimes during the fight, Flores claimed Navarette was lying. Flores repeatedly denied having a gun in his car that day. He also told the detectives several times a man observed the fight at the corner.

January 15, 2013, Part 2

The second part of the January 15, 2013, statement occurred after a break in the interrogation. Flores began by repeating the same story he had previously given to the detectives, denying taking Navarette and Jaimes to the orchard and denying having a gun in his possession.

After extensive questioning and cajoling, Flores finally changed his story. Flores explained that on the way home from the ranch, Jaimes and Navarette continued to argue. Jaimes and Navarette decided they wanted to settle the argument so they asked Flores to stop the vehicle.

Flores stopped in an orchard, and Navarette and Jaimes began fighting. Navarette fell to the ground, and Jaimes started kicking him. Flores separated the two, but they began fighting again and wouldn't stop. Flores had a gun in his vehicle, so he retrieved it. He then told them to stop fighting because he had a gun. Navarette ran to Flores and asked for the gun. Flores refused to give it to him. Jaimes threw a rock at Navarette. Navarette then struggled with Flores for the gun, and the gun discharged three times.

Flores and Navarette then left the scene. Flores said he gave the gun to a friend, Jarocho, to throw away. Flores did not know on what part of his body Jaimes was shot.

January 17, 2013, Part 1

The January 17, 2013, statement began with Flores denying he shot Jaimes, again claiming he was attempting to take the gun from Navarette when it discharged. He then changed his story to indicate the gun discharged accidentally as he grabbed it from Navarette.

When asked what happened to the gun, Flores claimed he drove to a nearby lake, swam as far towards the middle of the lake as he could, and then he dropped the gun. When told that the police would review video from the lake and look for his vehicle, Flores claimed he borrowed a vehicle to drive to the lake. Finally, Flores claimed he saw a pickup parked on the side of the road, and he dropped the gun into the bed of the pickup.

The interviewing detective then explained to Flores why his story did not match the physical evidence, particularly the fact Jaimes was shot three times in the head at very close range. Flores continued to claim the gun accidentally discharged when he was struggling with Navarette.

Finally, Flores claimed he pulled Jaimes off of Navarette and was trying to help Navarette to his feet. Jaimes continued to attack Navarette and somehow the gun discharged as Flores was trying to help Navarette and keep Jaimes away from Navarette. Flores remembered the gun discharging two times, but claimed he was scared and confused. He repeated throughout the interview that the shooting was an accident. Flores did not know where Jaimes had been shot, and continued to claim the gun went off when he was trying to separate Jaimes and Navarette. He eventually admitted he shot Jaimes in the head, but claimed he did not do so intentionally.

January 17, 2013, Part 2

As explained above, after giving the preceding statement, Flores contacted the investigating detectives and stated he wanted to make a further statement. In this interview, Flores claimed Navarette shot Jaimes, and in his previous statement he was attempting to protect Navarette.

The Arguments, Verdict, and Sentencing

Closing arguments were direct. The prosecutor focused on the fact Jaimes was shot three times in the head at close range to demonstrate the fallacy of Flores's claim that the firearm accidentally discharged. Moreover, because the shots occurred at close range, the evidence suggested an execution and not an accident. Combined with the gunshot residue tests, the prosecutor argued Flores was the only perpetrator, and he acted with malice aforethought when he murdered Jaimes.

Defense counsel focused on the interrogating detectives' deceptive practices during their interrogation of Flores and on Flores's claim that he was badgered until he admitted shooting Jaimes. Defense counsel also argued the police investigation was poorly performed and improperly focused on Flores without making any attempt to locate the actual perpetrator.

The jury found Flores guilty of first degree murder and also found true the allegation he personally used a firearm causing Jaimes's death. The trial court sentenced Flores to the statutorily mandated term of 25 years to life for the murder and a consecutive term of 25 years to life for the firearm enhancement.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting that after a thorough review of the record she could not identify any arguable issues. After reviewing the record, we agree.

The evidence was straightforward, primarily consisting of forensic evidence, eyewitness accounts of the events leading up to the shooting, and Flores's incriminating

statements. There were no serious evidentiary disputes. Both parties agreed to the jury instructions, which included justifiable homicide and the lesser included offenses of second degree murder, voluntary manslaughter, involuntary manslaughter, and exhibiting a dangerous weapon. Accordingly, the jury had numerous options during its deliberations depending on how it viewed the evidence. Closing arguments were based on the evidence and well within permissible parameters. The sentence was mandated by statute.

By letter dated January 12, 2016, we invited Flores to advise this court of any issues he wished us to address. Flores responded to our letter making various claims. He claimed he was coached by the interrogating detectives, asserting instances of alleged misconduct that do not appear in the recorded statements. Flores asserts this information was wrongfully redacted from the recording by the police. We must reject this assertion because there is no evidence in the record to support it.

Next, Flores asserts the jury did not understand “what was being said by the judge.” Apparently, this is a reference to the jury instructions and two questions submitted by the jury to the trial court seeking clarification. The trial court provided appropriate responses to these questions. No error occurred.

The remainder of Flores’s arguments are an attempt to argue the evidence does not support the verdict. He asserts the shoe print that the testimony indicated could possibly have been left by his shoe, or possibly by a deputy sheriff, could not have come from his shoe since his shoe was smaller than the print. The expert testimony suggested otherwise and, since Flores admitted being at the scene, it is unlikely this evidence contributed to the verdict.

Flores also complains because other shoe prints did not belong to him and only one tire print could be matched to his vehicle. He points out that no DNA was found on his clothing or in his vehicle. He apparently contends if he had shot Jaimes, DNA would

have been on his clothing. The jury was aware DNA tests were conducted and no matches were found on Flores's clothing.

He also criticizes the gunshot residue tests, asserting they were fabricated or there is an alternate explanation for the presence of gunshot residue in his vehicle. The jury was made aware of the limitations of this evidence.

Flores asserts the jury could not have been paying attention to the evidence or it would not have convicted him. He also argues the prosecutor misstated the testimony during closing arguments. Finally, he asserts he was innocent, and defense counsel was ineffective for failing to make various objections during the case.

We have reviewed the record and find no merit to these arguments. The evidence was sufficient to support the verdict, and Flores's complaints about discrepancies in the evidence largely pertain to irrelevant items or were adequately presented to the jury. It was the jury's job to evaluate the evidence and determine if the evidence was credible or not. Despite Flores's repeated assertions to the contrary, the record suggests the jury was paying attention and properly weighed the evidence before reaching a verdict.

DISPOSITION

After a thorough review of the record we agree with appellate counsel that there are no arguable issues in this case. The evidence against Flores was strong, and nothing in the record suggests the jury failed to properly perform its duty. Accordingly, the judgment is affirmed.